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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

7 JAMES BENEDICT STOCKHOLD,

8 Petitioner,

9 v.

10 SCOTT FRAKES,

11 Respondent.

No. C10-5595 RBL/KLS

**REPORT AND RECOMMENDATION**  
**Noted For: July 12, 2013**

12 This habeas corpus action has been referred to the undersigned United States Magistrate  
13 Judge Karen L. Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. It  
14 has been more than sixty days since the Court's mailings to Petitioner were returned and the  
15 Court does not have a current address for the Petitioner. Therefore, the undersigned recommends  
16 that the Court dismiss this action as Petitioner appears to have abandoned his case.

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18 **DISCUSSION**

19 By Order dated November 8, 2010, this habeas proceeding was stayed pending  
20 resolution of Petitioner James Benedict Stockhold's state court proceedings. ECF No. 29.  
21 Petitioner was ordered to file his amended habeas petition within thirty (30) days of receiving a  
22 final state court ruling. *Id.* Mr. Stockhold filed a status report on April 9, 2012, advising that  
23 his state court proceedings were still pending. ECF No. 39. On February 27, 2013, the Court  
24 directed Mr. Stockhold to file another status report. ECF No. 41. That mail was returned to the  
25 Court as undeliverable on March 8, 2013. ECF No. 42. A second mailing of the same order to  
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1 an address found in Mr. Stockhold's pleadings was also returned as undeliverable on March 8,  
2 2013. On April 22, 2013, the Court directed the Respondent to file a status report and reminded  
3 Petitioner of his duty to keep the Court advised of his present address. ECF No. 44. That mail  
4 was returned to the Court as undeliverable on April 26, 2013. ECF No. 45. A second mailing of  
5 the same order was also returned as undeliverable on May 10, 2013. ECF No. 47.

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7 Plaintiff has previously been advised of his duty to keep the Court advised of his current  
8 address. *See* ECF No. 45, at 3. Rule 41(b)(2) of the Local Rules provides:

9 A party proceeding pro se shall keep the court and opposing parties advised as to  
10 his current address. If mail directed to a pro se [Petitioner] by the clerk is  
11 returned by the Post Office, and if such [Petitioner] fails to notify the court and  
12 opposing parties within 60 days thereafter of his current address, the court may  
13 dismiss the action without prejudice for failure to prosecute.

14 CR 41, Local Rules W.D. Wash.

15 This action has existed more than sixty days without a current address for the Petitioner.  
16 Dismissal without prejudice for failure to prosecute is appropriate. Accordingly, the undersigned  
17 recommends **DISMISSAL WITHOUT PREJUDICE** for failure to prosecute pursuant to Local  
18 Rule 41(b)(2).

### 19 CONCLUSION

20 The Court should dismiss this action without prejudice as Petitioner has left no  
21 forwarding address and appears to have abandoned the case.

22 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil  
23 Procedure, the parties shall have fourteen (14) days from service of this Report to file written  
24 objections. *See also* Fed. R.Civ.P. 6. Failure to file objections will result in a waiver of those  
25 objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the  
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1 time limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on **July**  
2 **12, 2013**, as noted in the caption.

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4 **DATED** this 21st day of June, 2012.

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7 Karen L. Strombom  
8 United States Magistrate Judge  
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